IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

OP.No. 34607 of 2002(T)

PETITIONERS:
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1. **K.A.NAZAR, PEON,**
   MOHAMMA GRAMA PANCHAYAT, ALAPPUZHA (KUNDATHIL,
   MANNANCHERY P.O., ALAPPUZHA).

2. **V.B.PUSHPAVALLY, PEON,**
   THANNEERMUKAM GRAMA PANCHAYAT, ALAPPUZHA DIST.
   (KOOTHAKKARACHIRA, MUHAMMA P.O.)

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.ROY P.KURIAKOSE
SRI.SAJI KURIACHAN
SRI.M.R.NANDAKUMAR
SRI.PAUL ABRAHAM VAKKANAL

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY,
   LOCAL ADMINISTRATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PANCHAYATS,**
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.N.SANTHOSH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

O.P.NO.34607/2002 T

ORDER ON C.M.P.NO.58507/2002 IN O.P.NO.34607/2002 T

DISMISSED

1/11/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER NO.E3.405/93 DTD. 23/09/93 OF THE DISTRICT PANCHAYAT OFFICER, ALAPPUZHA.**

EXT.P2: **COPY OF THE RELEVANT PORTION OF THE COMMON SERVICE RULES.**

EXT.P3: **COPY OF THE RELEVANT PORTION OF SERVICE BOOK.**

EXT.P4: **COPY OF RELEVANT PORTION OF SERVICE BOOK EVIDENCING 100% TAX COLLECTION FOR 5 YEARS FROM 89-90 TO 93-94.**

EXT.P5: **COPY OF THE PETITION DTD. 5/11/01 FROM THE PETITIONERS.**

EXT.P6: **COPY OF ..DO...DO.....**

EXT.P7: **COPY OF THE COMMON REPLY DTD. 30/11/2001 OF THE DY. DIRECTOR OF PANCHAYAT.**

EXT.P8: **COPY OF THE APPEAL DTD. 16/01/2002 OF 1ST PETITIONER FILED BEFORE THE 2ND RESPONDENT.**

EXT.P9: **COPY OF THE APPEAL DTD. 16/01/2002 of the 2ND PETITIONER FILED ...DO....**

EXT.P10: **COPY OF THE COMMON REPLY DTD. 17/10/2002 OF THE 2ND RESPONDENT.**

EXT.P11: **COPY OF JUDGMENT DTD. 7/10/1994 IN O.P.NO.10656/94R OF THIS HON'BLE COURT.**

EXT.P12: **COPY OF JUDGMENT DTD. 30/05/1997 IN O.P.NO.84C89 OF 1995 OF THIS HON'BLE COURT.**

EXT.P13: **COPY OF GAZETTE DTD. 21/06/1994.**

EXT.P14: **COPY OF PROCEEDINGS OF THE DIST.COLLECTOR, ALAPPUZHA DTD. 02/09/2004.**

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.34607 OF 2002

Dated this the 1st day of November, 2007

JUDGMENT

The petitioners were peons governed by the Kerala Panchayat Common Service Rules, 1977. They have materials with them to show that while serving as peons they were involved in collection of cheques and they also achieved cent percent collection for five years continuously. According to them, under the Rules of 1977, they were put along with Junior Bill Collectors for being considered for promotion as Bill Collectors, though without acquiring SSLC. With the commencement of the Kerala Panchayat Subordinate Services Rules, 1994, the promotion to Lower Division clerks in category 3 of group 2 is confined to be from Junior Bill Collectors and the peons are kept away from the zone of consideration. The petitioners contend that as on 16.8.1994, there were peons including the petitioners, who had achieved cent percent collection for five years continuously and therefore, there is an anomaly in excluding them from being considered along with

Junior Bill Collectors in terms of the third proviso to the method of recruitment prescribed for category 3 of group 2 of the Rules, 1994.

2. Relying on different judgments of the Apex Court commencing with that in **T.R.Kapur & Others** v. **State of Haryana & Others** [1986 Suppl. SCC 584], it was argued that a vested right accrued in terms of an existing service rule cannot be interfered with, adverse to the interest of the employee, by a subsequent amendment to the service rules and that, this is how the constitutional provisions relating to making of the service rules have to be understood. While the learned counsel for the petitioner is right in stating that vested rights ought not to be discharged, the right to promotion is not a vested right, while right to be considered for promotion in accordance with the rules is a right recognised in law. The case dealt with in the precedents are not directly applicable to the facts of this case. It is not the case of the petitioners that they had, as a matter of fact, earned promotion or higher grade on the basis of the Rules of 1977 and are facing demotion on account of the Rules of 1994.

Though a case of hostile discrimination in terms of the Constitution cannot be demonstrated, in my considered view, the petitioners have apparently shown that there is anomaly in excluding the peons who had achieved cent percent collection for five years continuously as on 16.6.1994 from the sweep of the third proviso to category 3 in group 2 of the 1994 rules, because, if the quality of work that was being carried out by the Junior Bill Collectors and the peons until then were the same and if both of those categories were working without acquiring SSLC and had achieved cent percent collection for five years continuously, the administration needs to look into the question whether the peons could be deprived of being treated along with the Junior Bill Collectors, particularly when it is pointed out that category of L.D. Clerk is nothing but a re-christening of the category of Bill Collectors. Secondly, it is also the case of the petitioners that the peons without SSLC would aspire at the best, to become L.D. Clerks and that too, only if third proviso of category 3 in group 2 is modulated to give them such a benefit. Ext.P12 judgment of this Court is also called on to support the

submission of the petitioner that the anomaly requires to be rectified.

In the aforesaid circumstances, while refusing any declaration at the hands of this Court, the first respondent is hereby directed to consider the case of the petitioners as noted above and take such appropriate decision as may be found necessary to rectify any anomaly that needs to be cured, having regard to the facts and circumstances of the situation. A final decision shall be taken by the Government in this regard after affording an opportunity to the petitioners, by extending such opportunity to the first of them on behalf of others also. Such decision shall be rendered within an outer limit of four months from the date of receipt of a copy of this judgment. The petitioners will be at liberty to place further materials or representations before the first respondent in this regard.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.34607 OF 2002

JUDGMENT

1ST NOVEMBER, 2007.

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